

BILL NO. S-73-10-56

SPECIAL ORDINANCE NO. S- 117-73

AN ORDINANCE approving storm and sanitary agreements with JUSTUS CONTRACTING COMPANY, INC. for construction of sewers to serve South Towne Square, Phase I.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. The sewer agreement dated October 16, 1973 between JUSTUS CONTRACTING CO., INC., as Developer, and the CITY OF FORT WAYNE, by and through its Mayor and Board of Public Works, for the construction of a sanitary sewer in South Towne Square, Phase I, as follows:

Part of the Northwest fractional quarter, Section 31, Township 30 North, Range 13 East, Allen County, Indiana more particularly described as follows:

Commencing at the center of Section 31, Township 30 North, Range 13 East, marked by a 48-inch diameter dead, burned-out tree; thence North on the North and South center line of said Section 31, Township 30 North, Range 13 East 443 feet for a POINT OF BEGINNING, marked by an iron pin; thence North 87 degrees 16 minutes West a distance of 561.7 feet to a nail located on the center line of Old Decatur Road; thence North 27 degrees, 29 minutes West a distance of 806.4 feet along the centerline of said Old Decatur Road to a nail; thence North 61 degrees, 36 minutes East along the Southeasterly line of the parcel of land owned by Trinity Evangelical Lutheran Church, as recorded in Deed Record "I" Page 107, a distance of 294.5 feet to an iron pipe; thence North 28 degrees, 24 minutes West along the Northeasterly line of said Trinity Evangelical Lutheran Church as recorded in Deed Record "I" Page 107, and Deed Record "T", page 550, a distance of 351.6 feet to an iron pipe; thence South 87 degrees, 09 minutes East a distance of 843.5 feet to a stone and post located on the North and South centerline of said Section 31; thence South on the North and South centerline of said Section 31 a distance of 1,150 feet to the point of beginning.

the entire cost and expense of construction of said sewer to be borne by Developer, including City engineering fees, and to hold the City harmless from any liability for claims connected therewith, all as more particularly set forth in said Sewer Agreement, which is on file in the office of the Board of Public Works, and

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2  
3  
4 is by reference incorporated herein and made a part hereof, is  
5 hereby in all things ratified, confirmed and approved.

6 SECTION 2. That the Developer, and any owner or  
7 owners of land, their successors in title and assigns, which is  
8 now or may hereafter be located outside the corporate limits  
9 of the City of Fort Wayne, Indiana, who taps into the sewer  
10 main covered in said Agreement, or any extension thereof, shall  
11 be deemed to thereby waive his, her, their or its right to  
12 remonstrate against or otherwise object to, interfere with, or  
13 oppose any pending or future annexation by said City of Fort  
14 Wayne, Indiana, of such land or territory in which said land  
15 is located.

16 SECTION 3. This Ordinance shall be in full force and  
17 effect from and after its passage and approval by the Mayor.

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\_\_\_\_\_  
Councilman

APPROVED AS TO FORM  
AND LEGALITY

  
\_\_\_\_\_  
CITY ATTORNEY

Read the first time in full and on motion by Stier, seconded by Dirigo, and duly adopted, read the second time by title and referred to the Committee on Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_, at \_\_\_\_\_ o'clock P.M., E.S.T.

Date: 10-23-73

Charles W. Platterman  
CITY CLERK

Read the third time in full and on motion by Stier, seconded by Dirigo, and duly adopted, placed on its passage. Passed (~~LOSE~~) by the following vote:

	AYES <u>8</u>	NAYS <u>0</u>	ABSTAINED _____	ABSENT <u>1</u> to-wit:
BURNS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINGA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
KRAUS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MOSES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>A</u>
NUCKOLS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SCHMIDT, D.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SCHMIDT, V.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
STIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TALARICO	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATE: 11-13-73

Charles W. Platterman  
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map) (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution) No. S-117-73 on the 13th day of November, 1973.

ATTEST: (SEAL)

Charles W. Platterman CITY CLERK  
James A. Talarico PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 14th day of November, 1973, at the hour of 4:00 o'clock A. M., E.S.T.

Charles W. Platterman  
CITY CLERK

Approved and signed by me this 14th day of November, 1973, at the hour of 4:00 o'clock P. M., E.S.T.

Paul A. Schmitt  
MAYOR

Bill No. S-73-10-56

REPORT OF THE COMMITTEE ON PUBLIC WORKS

We, your Committee on Public Works to whom was referred an Ordinance  
approving storm and sanitary agreements with JUSTUS CONTRACTING  
COMPANY, INC. for construction of sewers to serve South Towne  
Square, Phase I.

have had said Ordinance under consideration and beg leave to report back to the Common  
Council that said Ordinance DO. PASS.

James S. Stier- Chairam

Eugene Kraus, Jr. - Vice-Chairman

Samuel J. Talarico

William T. Hinga

Vivian G. Schmidt

James S. Stier  
Eugene Kraus, Jr.  
Samuel J. Talarico  
William T. Hinga  
Vivian G. Schmidt

CONCURRED IN  
DATE 1-13-73 CHARLES W. WESTERMAN, CITY CLERK

65-101-7  
100-17

AGREEMENT

FOR

SANITARY SEWER EXTENSION

THIS AGREEMENT, made in triplicate this 16 day of October, 1973 by and between JUSTUS CONTRACTING CO., INC., hereinafter referred to as "DEVELOPER", and the CITY OF FORT WAYNE, INDIANA, an Indiana Municipal Corporation, hereinafter referred to as "CITY",

WHEREAS, the DEVELOPER desired to construct a sanitary sewer over that tract of ground described in an easement recorded in the office of the Recorder of Allen County, Indiana, as Document No. 72-07206, in accordance with plans, specification and profiles heretofore submitted to the CITY and now on file in the office of the Chief Engineer of the Water Pollution Control Engineering Department of the CITY, and known as South Towne Square Sanitary Sewer, which plans, specifications, profiles are by reference incorporated herein and made a part hereof, which sewer will serve not only land in which the DEVELOPER has an interest, but also adjoining land areas.

WHEREAS, the cost of the construction of said sewer is represented to be \$8,347.00 composed of \$7952.00 for construction costs; \$395.00 for engineering services.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

1. CONSTRUCTION OF SEWER

The DEVELOPER shall cause said sewer to be constructed and located in accordance with said plans, specifications and profiles, all approved by the CITY, under private contract with CITY approval. All work and materials shall be inspected by the CITY and conform with all CITY standards and specifications. Upon completion, said sewer shall become the property of CITY and all further maintenance thereafter shall be borne by the CITY.

## 2. COST OF CONSTRUCTION

The DEVELOPER agrees to pay the entire cost and expense of construction of said sewer, in cash, including CITY engineering fees, and to hold the CITY harmless from any liability for claims connected therewith.

## 3. AREA OF DEVELOPER

Said sewer, when accepted by the CITY, will serve the following described real estate:

Part of the Northwest fractional quarter, Section 31, Township 30 North, Range 13 East, Allen County, Indiana more particularly described as follows:

Commencing at the center of Section 31, Township 30 North, Range 13 East, marked by a 48-inch diameter dead, burned-out tree; thence North on the North and South center line of said Section 31, Township 30 North, Range 13 East 443 feet for a POINT OF BEGINNING, marked by an iron pin; thence North 87 degrees 16 minutes West a distance of 561.7 feet to a nail located on the center line of Old Decatur Road; thence North 27 degrees, 29 minutes West a distance of 806.4 feet along the centerline of said Old Decatur Road to a nail; thence North 61 degrees, 36 minutes East along the Southeasterly line of the parcel of land owned by Trinity Evangelical Lutheran Church, as recorded in Deed Record "I" Page 107, a distance of 294.5 feet to an iron pipe; thence North 28 degrees, 24 minutes West along the Northeasterly line of said Trinity Evangelical Lutheran Church as recorded in Deed Record "I" Page 107, and Deed Record "T", page 550, a distance of 351.6 feet to an iron pipe; thence South 87 degrees, 09 minutes East a distance of 843.5 feet to a stone and post located on the North and South centerline of said Section 31; thence South on the North and South centerline of said Section 31 a distance of 1,150 feet to the point of beginning.

As the DEVELOPER will pay for the cost of construction of said sewer as it pertains to the above described area, no charge or assessment is made by this Agreement against the above described real estate for the construction of said sewer by the present or future owners of said real estate except only as to such standard monthly service charges, tap-in and inspection fees as are customarily charged by the CITY for connection to CITY sewer mains.

#### 4. CHARGE AGAINST EXCESS AREA

Said sewer, when constructed, will also serve the additional or excess area adjacent to the above described real estate and more particularly described in Exhibit A attached hereto and made a part hereof.

In the event any present or future owner of said described excess area shall at any time within fifteen (15) years after the date of this contract, desire to use said sewer or any extension thereof, whether by direct tap or through the extension or connection of lateral or local lines to service such land; CITY through its duly constituted authorities, before permitting such use, shall require by contract or assessment, as may be appropriate, that such owner or owners of said excess area pay to CITY in addition to the cost of standard tap-in and inspection fees, the sum of \$0.0057 cents per square foot for the area served by each such connection and use, which represents the fair share of the cost of the extension of CITY sewer to said excess area. EXHIBIT "A", showing properties in excess area subject to charge for construction and use of sewer as of this date is attached.

The amount so collected by the CITY shall be paid by the CITY within sixty (60) days of the receipt thereof by CITY to DEVELOPER.

#### 5. AREA CONNECTION CHARGE

Any party in said excess area connecting to the sanitary sewer described herein, shall also pay an area connection charge of Five Hundred (\$500.00) Dollars per acre served at the time of such connection. This charge is in addition to the local charge set forth in Article 4 herein, and represents the oversizing cost expended by the city in construction of the South Anthony Interceptor Sewer (Resolution #181), the Southtown Mall Lift Station (Resolution #176), and the Southtown Mall Sewer Extension (Resolution #192) which service the sewer described herein.

7. WAIVER OF RIGHT TO REMONSTRATE AGAINST ANNEXATION

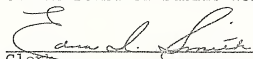
The Developer, for itself, its successors in title and assigns, waives and releases any and all rights which it may now or hereafter have to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by City of any territory now or hereafter owned by it, as described in Article 3 herein, or hereafter served by said sewer or any extension thereof.

In further consideration and to induce City to execute and ratify this contract, said Developer, for itself, its successors and assigns, agrees by this contract to vest in City the permanent right at its discretion to annex to the City of Fort Wayne at any future time by duly authorized ordinance the said real estate described in Article 3 herein.

8. COUNCILMANIC APPROVAL

It is understood and agreed that this contract is in all respects subject to approval by the Common Council of City, by duly adopted Ordinance, and if such Ordinance is not adopted within a period of Ninety (90) days after execution thereof, this Contract shall be null and void and of no further force and effect.

Approved and Accepted for Justus Contracting Co., Inc., by Mike Britton on October 15, 1973, in telephone conversation with Clerk of the Board of Public Works

  
Clerk



6. BOND

This Contract is subject to DEVELOPER furnishing a satisfactory Performance and Guaranty Bond for the value of the sewer which shall guarantee said sewer against defects for a period of one (1) year from the date of final acceptance of said sewer by the CITY.

9. GOVERNING STATUTE

It is the intention of the parties hereto to utilize and take advantage of and apply to this Agreement the provisions of Sections 16, 17 and 18 of Chapter 128 of the Acts of 1967 of the State of Indiana (Burns Indiana Statutes Anno., 1968 supplement, Section 48-3963, 3964 and 3965), the provisions of which Sections shall govern with respect to any matters not specifically outlined herein.

IN WITNESS WHEREOF, the parties have subscribed to this Agreement the day and year first above written.

DEVELOPER:

JUSTUS CONTRACTING CO., INC.

By Walter Justus

CITY OF FORT WAYNE, INDIANA:

By Ivan Lebamoff  
(Ivan Lebamoff) Mayor

BOARD OF PUBLIC WORKS

By Jerry D. Boswell  
(Jerry D. Boswell) Chairman

By Ronald L. Bonar  
(Ronald L. Bonar), Member

By William G. Williams, Member

ATTEST:

Edna L. Smith  
Clerk

Approved as to form and legality:

[Signature]  
City Attorney

STATE OF INDIANA )  
COUNTY OF ALLEN ) SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Ivan Lebamoff, Mayor, Jerry D. Boswell, Chairman, Ronald L. Bonar and ~~William C. Williams~~, Members of Board of Public Works, who acknowledged the execution of the foregoing agreement for sewer extension, as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal, this 16 day of October, 1973.

Anne J. Fox  
Notary Public

My Commission Expires:

March 6, 1976

STATE OF INDIANA )  
COUNTY OF MARION ) SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Justus Contracting Co., Inc., by Walter E. Justus its President, who acknowledged the execution of the foregoing agreement for sewer extension, as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this 21st day of June, 1973.

Delores Hunt  
Notary Public

My Commission Expires:

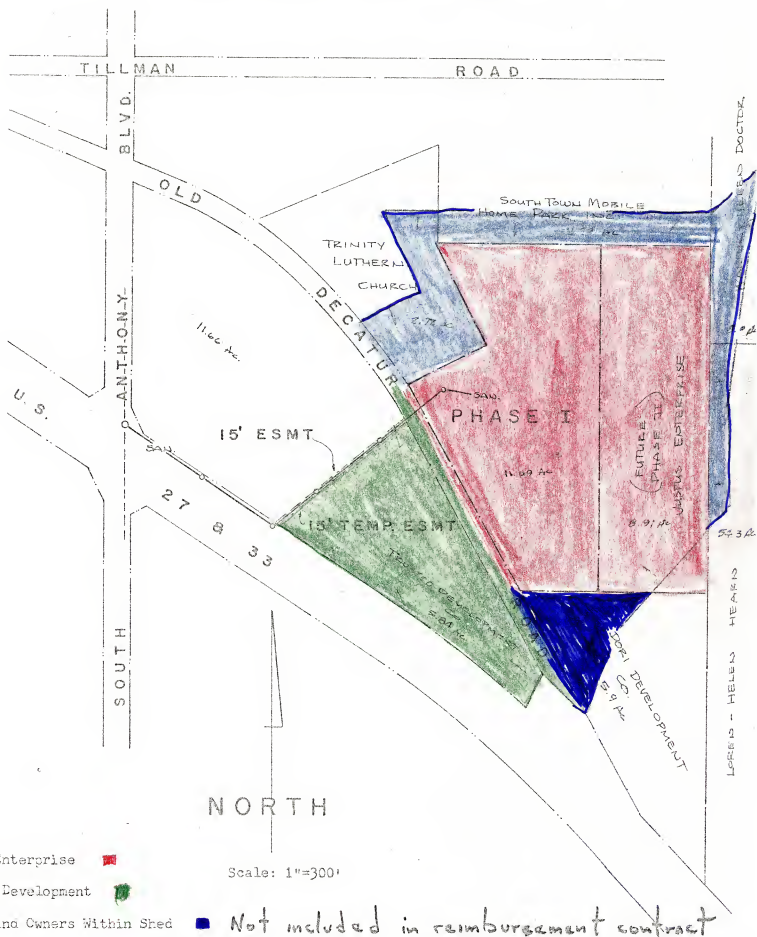
9-25-75

This Instrument prepared by D. Richard Keppler, Attorney at Law.

EXHIBIT "A"

A certain triangular tract of ground located in Allen County, Indiana, which is bounded on the Northwest by an easement recorded in the Office of the REcorder of Allen County, Indiana, as Document No. 72-07206 and on the southwest by the right-of-way of U.S. 27 and 33 and on the northeast by the right-of-way of Old Decatur Road.

EXHIBIT "B" - SANITARY SEWER EXTENDED FROM SOUTH TOWNE  
SQUARE APARTMENTS TO SOUTH ANTHONY BOULEVARD



Prepared by: COIL ENGINEERS, INC.  
616 E. Washington Blvd.  
Fort Wayne, Indiana

April 30, 1973  
ENC 5/27/73

SCHEDULE "B" FOR SANITARY SEWER EXTENDED FROM  
SITE OF SOUTH TOWNE SQUARE APARTMENTS

LAND OWNERS OF RECORD

ACRES OF CONTRIBUTION

Justus Enterprise	20.0 acres
Trustco Development	5.84 acres
Other Land Owners Within Shed	7.90 acres

Owner	% of land served	Total cost of facility including engineering	Share of Cost	Share of Initial Cost
Justus Enterprise	59.277 %	\$ 8347.00	\$ 4,947.85 \$ 247.39 \$ 0.0057 sq. ft.	\$ 8,347.00
Trustco Development	17.309 %	\$ 8347.00	\$ 1,444.78 \$ 247.39 \$ 0.0057 sq. ft.	0
Other Land Owners Within Shed Not To Be Included In Reimbursement Contract	23.414	\$ 8347.00	\$ 1,954.37 \$ 247.39 \$ 0.0057 sq. ft.	0

*S-73-10-56*

TITLE OF ORDINANCE Sewer agreements with Justus Construction for South Towne Square, Phase I.

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

SYNOPSIS OF ORDINANCE

Storm and Sanitary Sewer Agreements providing for Justus Contracting Company to construct sewers to serve South Towne Square, Phase I and adjacent area.. Said area is partially outside City Limits.

All costs are to be paid by the developer.

Reimbursement clause allows for payment to developer when service is provided to properties in excess area being served by these sewers.

EFFECT OF PASSAGE More sewer customers for City.

EFFECT OF NON-PASSAGE Failure to provide sewer service to prospective customers.

MONEY INVOLVED (Direct Costs, Expenditures, Savings)

No direct costs to City. Developer will pay Utility for engineering and inspection.

ASSIGNED TO COMMITTEE (J.N.) Public Works.